

Jeff A. Fox, MD

5/1/2018

1 (1)

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OKLAHOMA

3 MARILYN PHILLIPS,

4 Plaintiff,

5 vs

No. 17-CV-547-JHP-JFJ

6 FARMERS INSURANCE COMPANY,
7 INC.,

8 Defendant.

9 VIDEOTAPED DEPOSITION OF JEFF FOX, M.D.
10 Taken on Behalf of the Plaintiff
11 On May 1, 2018, beginning at 3:15 p.m.
12 In Tulsa, Oklahoma

13 APPEARANCES

14 Appearing on behalf of the PLAINTIFF:

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PLAINTIFF'S
EXHIBIT

3

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10 (34 - 37)

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1 Q Well --

2 A You're asking me to interpret this. I'm

3 asking, it's your record. I don't understand the

4 difference.

5 Q Well, it's not my record, it's the

6 investigating officer's, but what he checked off was

7 no injury for injury severity, and then type, he

8 says the type is not applicable because there was

9 apparently no injury. Let me just ask you this,

10 Doctor, are those findings consistent with the

11 history you got from the patient that there was

12 immediate pain?

13 A I don't know. I don't know how to

14 interpret this information.

15 Q Okay.

16 A It's not my level of expertise.

17 (Exhibit 2 marked for identification.)

18 Q (BY MR. TAYLOR) All right. Let's go over

19 to Exhibit Number 2. I'll tell you that these are

20 records from Med Center, I think that's also

21 referred to as urgent care, on the date of this

22 accident August 27, 2012.

23 A Yes.

24 Q As far as the history given to the people

25 there at the Med Center, would you agree that it

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1 says that they wrote on that date that she was --

2 she said she was a restrained driver stopped at a

3 red light, saw accident coming, double hit to rear,

4 no airbag deployed, head to back of headrest, sore

5 to B biceps, and I'm assuming B means bilateral?

6 A I would assume.

7 Q That means both biceps; right?

8 A Yes.

9 Q X-rays were taken of the cervical spine.

10 Where it says C spine, that's cervical; isn't it?

11 A C spine is cervical, yes.

12 Q There were no x-rays of the shoulders that

13 day; were there?

14 A Hang on. I've got to find -- correct.

15 Q Then under the diagnosis, the finding was

16 bilateral biceps strain. What type of injury is

17 that?

18 A Well, they're not specific. The biceps

19 starts here and it ends here, so in the shoulder it

20 would be in this region here (indicating).

21 Q You did not find a tear of biceps tendon,

22 though; did you?

23 A No.

24 Q Is that true in both shoulders?

25 A Correct. There was not.

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1 Q All right. And then on the day of the

2 accident, the second diagnosis was cervical/thoracic

3 strain, and then the third diagnosis, elevated blood

4 pressure?

5 A Yes.

6 Q Is that how you would interpret that?

7 A Yes.

8 Q All right. There is no diagnosis in

9 regard to each shoulder; is there?

10 A Well, the biceps strain is a shoulder

11 diagnosis if they're referring to her proximal

12 shoulder.

13 Q All right. Is that record inconsistent

14 with the history you got from the patient that she

15 had immediate pain in the shoulders?

16 A Well, I guess the ambiguity is this biceps

17 pain. You know, biceps pain here (indicating) is in

18 the shoulder, so if that was the pain they were

19 referring to then that would be consistent. If it

20 was biceps pain here (indicating), that would be

21 inconsistent.

22 Q Okay. But you're saying high up, if the

23 pain was up in the shoulder it could be consistent?

24 A Biceps is right here (indicating), yes.

25 Q All right. Is the bicep not a little bit

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1 lower than that?

2 A Well, the biceps starts dead center in the

3 shoulder attached to the superior labrum and comes

4 out of that labrum and comes down the front of the

5 shoulder and forms the biceps muscle.

6 (Exhibit 3 marked for identification.)

7 Q (BY MR. TAYLOR) All right. Let me refer

8 you to Exhibit 3. I tell you this is a recorded

9 statement of Marilyn Phillips and it appears like

10 the date of interview was September 5, 2012.

11 MR. LAIZURE: Well, let me just interpose

12 an objection to the use of this document in this

13 deposition because it's not been authenticated or

14 verified. We have no idea whether this is accurate

15 and contains the entire statement given by

16 Ms. Phillips, but I've made my record.

17 You may proceed, Mr. Taylor.

18 MR. TAYLOR: Thank you.

19 Q (BY MR. TAYLOR) Doctor, on the second page

20 of this recorded statement right at the top, a

21 question was asked Ms. Phillips, and, again, this is

22 on September 5, 2012, which I believe that would be

23 a little over a week after the accident. Question,

24 what type of injuries did you sustain; her answer,

25 my arms and my neck and my head and I just felt

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1 very, very, yeah, bad. Would you agree that
 2 there's -- she's not saying she had pain in her
 3 shoulders, would you agree with that?
 4 A She did not say shoulders.
 5 Q If an acute injury causes a torn rotator
 6 cuff, how does that affect the range of motion of
 7 the arm?
 8 A It would be diminished typically.
 9 Q Of course, you conducted the range of
 10 motion test?
 11 A Yes.
 12 Q Did you find diminishment of the range of
 13 motion?
 14 A Two years later my exam -- you're asking
 15 about acutely, now you're asking about my exam two
 16 years later?
 17 Q Yes.
 18 A What's your question about that?
 19 Q Well, I asked if an acute injury causes a
 20 tear of the rotator cuff would it diminish the range
 21 of motion? And then my follow-up --
 22 A At that time, certainly.
 23 Q Okay.
 24 A You would expect that to.
 25 Q And then does that change over time

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1 without surgery?
 2 A It can.
 3 Q Can the rotator cuff heal without surgery?
 4 A It doesn't heal.
 5 Q What would cause --
 6 A But the motion came improve.
 7 Q What causes it to improve without surgery?
 8 A The other muscles compensate. As we
 9 talked about your study, you have asymptomatic
 10 patients with normal range of motion who have a torn
 11 rotator cuff; right?
 12 Q Yes. Did you see any record anywhere that
 13 indicated that she at any time had a diminished
 14 range of motion?
 15 A I didn't see any record of range of
 16 motion.
 17 Q In the case of an acute tear of the
 18 rotator cuff are there any symptoms other than pain,
 19 such as a snapping or loss of muscle power, what
 20 symptoms would you expect to find?
 21 A In an acute tear you certainly could find
 22 snapping. You could have decreased strength, I
 23 assume you're talking about loss of power. You can
 24 have crepitation noise in the shoulder, you can have
 25 pain at night. It's pretty limitless. I can keep

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1 on going for quite a while.
 2 Q Based on your findings during both
 3 surgeries she had at least a couple of different
 4 tears; correct?
 5 A Two tendons, the infraspinatus and
 6 supraspinatus that both attach at the top had tears
 7 in them.
 8 Q All right. Considering her age, just
 9 based on what you saw in surgery did it look to you
 10 like this was the result of an acute injury or more
 11 of an attritional change?
 12 A One couldn't tell. The surgery, I
 13 believe, was two years after the injury; is that
 14 accurate?
 15 Q Yes.
 16 A So it's not an acute surgical case. Now,
 17 if I'd looked at that a week after the surg- --
 18 after the injury I could answer that question. But
 19 two years later, I can't tell.
 20 Q Can you tell by MRI?
 21 A You can tell -- sure, if an MRI was done
 22 immediately after, then that could demonstrate
 23 acuity.
 24 Q In this case you ordered the MRIs; is that
 25 correct?

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1 A I believe so.
 2 Q And those were -- there was one on each
 3 shoulder, they were both in 2014.
 4 A Yes.
 5 Q So based on what I'm hearing from you, it
 6 sounds like you cannot tell from what you see on the
 7 films whether it is the result of an acute injury
 8 versus an attritional problem.
 9 A I could not age this as far as saying was
 10 the rotator cuff torn on that date or was it already
 11 torn the day before her accident, no.
 12 Q You've seen patients in this age range of
 13 Ms. Phillips who have had rotator cuff tears, and in
 14 your opinion exist -- had them maybe for years
 15 without symptoms?
 16 A Yes.
 17 Q And then at some point in time there's an
 18 MRI that shows the evidence of a tear and you
 19 operate; does that happen?
 20 A Well, there would be symptoms that led to
 21 that MRI and then symptoms would lead to one having
 22 a surgery.
 23 Q As I understand your records, I think you
 24 told us that you discharged her on April 30, 2015 --
 25 or maybe the term is you released her from your

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